A bill to be entitled

An act relating to scrutinized companies; amending s. 215.473, F.S.; providing legislative findings; revising and providing definitions; requiring the State Board of Administration to identify all companies in which public moneys are invested that are doing certain types of business in or with Cuba or Syria; requiring the board to create and maintain certain scrutinized companies lists that name all such companies; requiring the board to periodically contact all scrutinized companies and encourage them to refrain from engaging in certain types of business in or with Cuba or Syria; requiring the board to inform scrutinized companies of their status as a scrutinized company and to provide notice of the opportunity to clarify the nature of the company's business activities; providing for removal of a company from the list under certain conditions; requiring the board to divest all publicly traded securities of a scrutinized company under certain conditions; providing for reintroduction of a company onto the list; providing exceptions to the divestment requirement; prohibiting the board from acquiring securities of scrutinized companies that have active business operations; providing an exemption to the divestment requirement and investment prohibition; providing an additional exception from the divestment requirement and the investment prohibition for certain indirect holdings in actively managed investment funds; providing procedures of the board with respect to requesting removal of scrutinized companies from actively managed investment funds and defined contribution plans or the creation of a similar fund that excludes such companies; providing reporting requirements of the board; providing for cessation of assembly of the Scrutinized Companies with Activities in Cuba List and the Scrutinized Companies with Activities in Syria List, cessation of engagement and divestment of such companies, and restoration of authority to reinvest in such companies under specified conditions; authorizing the board to cease divesting or reinvesting in certain companies having scrutinized active business operations under specified conditions; amending s. 287.135, F.S.; prohibiting a state agency or local governmental entity from contracting for goods and services of more than a certain amount with a company that is on the Scrutinized Companies with Activities in Cuba List or the Scrutinized Companies with Activities in Syria List; requiring a contract provision that allows for termination of the contract if the company is found to have been placed on such list; providing exceptions; requiring certification upon submission of a bid or proposal for a contract, or before a company enters into or renews a contract, with an agency or governmental entity that the company is not on the

Scrutinized Companies with Activities in Cuba List or the Scrutinized Companies with Activities in Syria List; providing procedures upon determination that a company has submitted a false certification; providing for civil action; providing penalties; providing attorney fees and costs; providing a statute of repose; prohibiting a private right of action; requiring the Department of Management Services to notify the Attorney General after the act becomes law; providing an effective date.

WHEREAS, with a population of approximately 11 million, Cuba is a totalitarian communist state that does not tolerate opposition to official policy, and

WHEREAS, the current government of Cuba assumed power on January 1, 1959, and

WHEREAS, although the Cuban constitution recognizes the unicameral National Assembly as the supreme authority in Cuba, the Communist Party is recognized in the constitution as the only legal party and "the superior leading force of society and of the state," and

WHEREAS, elections in January 2008 for the Cuban National Assembly were neither free nor fair, and all of the candidates had to be preapproved by a Communist Party candidacy commission, with the result that the Communist Party candidates and their allies won 98.7 percent of the vote and 607 of 614 seats in the National Assembly, and

WHEREAS, the Cuban government continues to deny its citizens their basic human rights, including the right to change their government, and has committed numerous and serious abuses against the citizens of Cuba, and

WHEREAS, among the human rights problems reported within Cuba are beatings and abuse of prisoners and detainees, harsh and life-threatening prison conditions, including denial of medical care, harassment, and beatings, and threats against political opponents by government-recruited mobs, police, and state security officials who acted with impunity, and

WHEREAS, arbitrary arrest and detention of human rights advocates and members of independent professional organizations, and denial of fair trial for at least 194 political prisoners and as many as 5,000 persons who have been convicted of potential "dangerousness" without being charged with any specific crime are also reported, and

WHEREAS, there have also been severe limitations on freedom of speech and the press, denial of peaceful assembly and association, restrictions on freedom of movement, including selective denial of exit permits to citizens and the forcible removal of persons from Havana to their hometowns, restrictions on freedom of religion and refusal to recognize domestic human rights groups or permit them to function legally, discrimination against persons of African descent, and severe restrictions on workers' rights, including the right to form independent unions, and

WHEREAS, other problems that are prevalent in Cuba include increasing incidences of domestic violence, underage prostitution, and trafficking in human beings, and

WHEREAS, Cuba is on the United States Department of State's list of State Sponsors of Terrorism, and for nearly half a century the United States has unilaterally imposed an economic, commercial, and financial embargo against Cuba, and

WHEREAS, the embargo, partially imposed on Cuba in October 1960, was enacted after Cuba nationalized the properties of United States citizens and corporations and it was strengthened to a near-total embargo on February 7, 1962, and

WHEREAS, though the severity and the scope of the sanctions have varied, depending upon political developments in Cuba, the United States, and the rest of the world, the United States Government Accountability Office has stated that "the embargo on Cuba is the most comprehensive set of United States sanctions on any country, including other countries designated by the United States Government to be state sponsors of terrorism," and

WHEREAS, also on the Department of State's list of State Sponsors of Terrorism is the nation of Syria, and

WHEREAS, on March 8, 1963, the Baath Party in Syria enacted an emergency law that suspended basic constitutional rights such as freedom of speech and assembly and instituted martial law, and

WHEREAS, in February 1982, the Syrian army, under the orders of Syrian President Hafez al-Assad, effectively ended a campaign begun in 1976 by Sunni Islamic groups against the Assad regime with what is now known as "the Hama massacre," the quelling of a revolt by the Sunni Muslim community against the al-Assad regime that resulted in Syrian deaths, the estimates of which range from 10,000 to possibly as many as 40,000 Syrian citizens according to the Syrian Human Rights Committee, and

WHEREAS, the Hama massacre has been described as being among "the single deadliest acts by any Arab government against its own people in the Middle East," and

WHEREAS, in 2011 the "Syrian uprising" began in that country, and

WHEREAS, the Syrian uprising is an ongoing internal conflict occurring in Syria that began with protests that started on January 26, 2011, and then escalated to an uprising by March 15, 2011, and

WHEREAS, the demands of protesters in this sustained campaign of civil resistance include the allowance by the ruling Baath Party of other political parties, the end of President Bashar al-Assad's presidency, equal rights for Kurds, and broad political freedoms such as freedom of the press, free speech, and freedom to assemble, and

WHEREAS, as protests continued, the Syrian government used tanks and snipers to force Syrian citizens off the streets, water and electricity were shut off, and security forces began confiscating flour and food in various areas of the country, and

WHEREAS, violence escalated as the crisis wore on and as a result more than 3,000 people were killed, many more were injured, and thousands of protesters have been detained, with dozens of detainees reportedly having been tortured and killed, and

WHEREAS, since the beginning of the uprising, the Syrian government has made several concessions, including the repeal on April 21, 2011, of the 1963 emergency law which allowed the government sweeping authority to suspend constitutional rights, though the concessions are widely considered trivial and superficial by protesters demanding more meaningful reform, especially in light of the fact that government crackdowns on protesters have continued to heighten, and

WHEREAS, the oppressive Assad Regime blatantly murders protesters of the regime in mass, regularly detains political and human rights activists and journalists, engages in widespread media censorship, and is associated with the disappearance of citizens opposed to the Assad regime, and

WHEREAS, the United States Government and other nations throughout the world have openly called for President Assad to step down from office, and

WHEREAS, effective August 18, 2011, President Barack Obama issued a new Executive Order imposing significant new economic sanctions on Syria, and

WHEREAS, the action greatly expanded United States international trade restrictions against Syria and its government in certain important respects, representing a more comprehensive unilateral economic embargo, and

WHEREAS, most notably, the sanctions now include a freeze on the property and interests of property of the Government of Syria in the United States or held by United States persons, defined to include entities in the United States and their foreign branch offices, United States citizens or lawful permanent residents, and anyone of any nationality acting or located within the United States, and

WHEREAS, the sanctions include prohibitions on United States persons engaging in any transactions with the Syrian Government, making new investments in Syria, providing any services to Syria, or conducting business dealings in or related to petroleum or petroleum products of Syrian origin, and

WHEREAS, the sanctions also include a ban on the importation of Syrian-origin petroleum products into the United States and a prohibition against United States persons facilitating, approving, financing, or guaranteeing a transaction or dealing with a foreign person related to any of the prohibitions in place against Syria, and

WHEREAS, both the Government of Cuba and the Government of Syria have repeatedly committed human rights violations through intimidation by military and security forces, through bureaucratic and administrative obstruction, through acts of terrorism and atrocities directed against civilians, and through the displacement of citizens from their homes, and

WHEREAS, the Federal Government has imposed sanctions against the Government of Cuba and the Government of Syria, and such sanctions are monitored through the United States Treasury Department's Office of Foreign Assets Control (OFAC), and

WHEREAS, according to a former chair of the United States Securities and Exchange Commission, the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanctions list is, in the SEC staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company, and

WHEREAS, because the United States Secretary of State has determined that both Cuba and Syria are countries whose governments have provided support for acts of international terrorism, as a result, the United States has restricted assistance, defense exports, defense sales, financial transactions, and various other transactions with the Government of Cuba and the Government of Syria, and

WHEREAS, a 2006 report by the United States House of Representatives states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment," and

WHEREAS, in response to the financial risk posed by investments in companies doing business with a state that sponsors terrorists, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies, and

WHEREAS, divestment actions precipitated by such sponsorship of terrorism and human rights violations encompass universities, municipalities, states, and private pension plans, and

WHEREAS, companies facing such widespread divestment present further material risk to remaining investors, and

WHEREAS, it is a fundamental responsibility of the State of Florida to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors, and

WHEREAS, it is the prerogative and desire of the State of Florida, with respect to investment resources in its control and to the extent reasonable, with due consideration for return on investment on behalf of the state and its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for terrorism and human rights violations, including certain non-United States companies presently doing business in such countries, and

WHEREAS, while divestiture should be considered with the intent to improve investment performance and by the rules of prudence, fiduciaries must take into account all relevant substantive factors in arriving at an investment decision, and

WHEREAS, the State of Florida is deeply concerned about investments in publicly traded companies that have business activities in and ties to Cuba and Syria as a financial risk to the shareholders, and

WHEREAS, by investing in publicly traded companies having ties to Cuba and Syria, the Florida State Board of Administration is putting the funds it oversees at substantial financial risk, and

WHEREAS, divestiture from markets that are vulnerable to embargo, loan restrictions, and sanctions from the United States and the international community, including the United Nations Security Council, is in accordance with the rules of prudence, and

WHEREAS, the Legislature finds that this act should remain in effect only insofar as it continues to be consistent with and does not unduly interfere with the foreign policy of the United States as determined by the Federal Government, and

WHEREAS, to protect Florida's assets, it is in the best interest of the state to enact a statutory prohibition regarding the investments managed by the State Board of Administration doing business in Cuba and Syria, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.473, Florida Statutes, is amended to read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran; Cuba; Syria.—

(1) DEFINITIONS.—As used in this act, the term:

(a) "Active business operations" means all business operations that are not inactive business operations.

(b) "Business operations" means engaging in commerce in any form in Sudan, ~~or~~ Iran, Cuba, or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.

(d) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted:

1. The genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other;

2. Encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur;

3. Actively working to deny, cover up, or alter the record on human rights abuses in Darfur; or

4. Other similar actions.

(e) "Cuba" means the nation of Cuba.

(f) ~~(e)~~ "Direct holdings" in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(g) "Government of Cuba" means the government of Cuba, under the control of General Raul Castro and the Cuban Communist Party, its instrumentalities, and companies owned or controlled by the government of Cuba.

(h) ~~(f)~~ "Government of Iran" means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(i) ~~(g)~~ "Government of Sudan" means the government in Khartoum, Sudan, that is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does not include the regional government of southern Sudan.

(j) "Government of Syria" means the government of Syria, under the control of President Bashar Al-Assad and the Arab Socialist Baath Party, its instrumentalities, and companies owned or controlled by the government of Syria.

(k) ~~(h)~~ "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(l) ~~(i)~~ "Indirect holdings" in a company means all securities of that company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this act.

(m) ~~(j)~~ "Iran" means the Islamic Republic of Iran.

(n) ~~(k)~~ "Marginalized populations of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(o) ~~(l)~~ "Military equipment" means weapons, arms, military supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems, military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan, Cuba, or Syria.

(p) ~~(m)~~ "Mineral-extraction activities" include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including providing supplies or services in support of such activities.

(q) ~~(n)~~ "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including providing supplies or services in support of such activities, except that the mere retail sale of gasoline and related consumer products is not considered an oil-related activity.

(r) ~~(o)~~ "Petroleum resources" means petroleum, petroleum byproducts, or natural gas.

(s) ~~(p)~~ "Power-production activities" means any business operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including providing supplies or services in support of such activities.

(t) ~~(q)~~ "Public fund" means all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121.

(u) ~~(r)~~ "Scrutinized active business operations" means active business operations that have resulted in a company becoming a scrutinized company.

(v) ~~(s)~~ "Scrutinized business operations" means business operations that have resulted in a company becoming a scrutinized company.

(w) ~~(t)~~ "Scrutinized company" means any company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and:

a. More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums~~,~~ or projects commissioned by the government of Iran, or companies

involved in consortiums or projects commissioned by the government of Iran and:

a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action; or

b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

<u>5. The company has business operations that involve contracts with or provision of supplies or services to the government of Cuba, companies in which the government of Cuba has any direct or indirect equity share, consortiums or projects commissioned by the government of Cuba, or companies involved in consortiums or projects commissioned by the government of Cuba and:</u>

<u>a. More than 10 percent of the company's total revenues or assets are linked to Cuba, and the company has failed to take substantial action; or</u>

<u>b. The company has, with actual knowledge, on or after January 1, 1959, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period.</u>

6. The company supplies military equipment within Cuba, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Cuba or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Cuba, or sale of such equipment solely to any internationally recognized peacekeeping force or humanitarian organization.

7. The company has business operations that involve contracts with or provision of supplies or services to the government of Syria, companies in which the government of Syria has any direct or indirect equity share, consortiums or projects commissioned by the government of Syria, or companies involved in consortiums or projects commissioned by the government of Syria and:

a. More than 10 percent of the company's total revenues or assets are linked to Syria and involve oil-related activities, and the company has failed to take substantial action; or

b. The company has, with actual knowledge, on or after March 8, 1963, made an investment of $20 million or more, or any combination of investments of at least $10 million each, which in the aggregate equals or exceeds $20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Syria's ability to develop the petroleum resources of Syria.

8. The company supplies military equipment within Syria, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Syria or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Syria, or sale of such equipment solely to any internationally recognized peacekeeping force or humanitarian organization.

(x) ~~(u)~~ "Social-development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment; agricultural supplies or infrastructure; educational opportunities; journalism-related activities; information or information materials; spiritual-related activities; services of a purely clerical or reporting nature; food, clothing, or general consumer goods that are unrelated to oil-related activities; mineral-extraction activities; or power-production activities.

(y) "Substantial action specific to Cuba" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations.

(z) ~~(v)~~ "Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations.

(aa) ~~(w)~~ "Substantial action specific to Sudan" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations; undertaking humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity evaluated and certified by an independent third party to be substantially in a relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(bb) "Substantial action specific to Syria" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations.

(cc) "Syria" means the nation of Syria.

(2) IDENTIFICATION OF COMPANIES.—

(a) Within 90 days after the effective date of this act, the public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:

1. Reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies having business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the public fund that invest in companies having business operations in Sudan; or

3. Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

4. Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions for companies conducting business or investing in countries that are designated state sponsors of terror.

(b) By the first meeting of the public fund following the 90-day period described in paragraph (a), the public fund shall assemble all scrutinized companies that fit criteria specified in subparagraphs (1)(w)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into a "Scrutinized Companies with Activities in Sudan List," ~~and~~ shall assemble all scrutinized companies that fit criteria specified in subparagraph (1)(w)4. ~~(1)(t)4.~~ into a "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,~~.~~" shall assemble all scrutinized companies that fit criteria specified in subparagraphs (1)(w)5. and 6. into a "Scrutinized Companies with Activities in Cuba List," and shall assemble all scrutinized companies that fit criteria specified in subparagraphs (1)(w)7. and 8. into a "Scrutinized Companies with Activities in Syria List."

(c) The public fund shall update and make publicly available quarterly the Scrutinized Companies with Activities in Sudan List, ~~and~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, and the Scrutinized Companies with

Activities in Syria List based on evolving information from, among other sources, those listed in paragraph (a).

(d) Notwithstanding the provisions of this act, a social-development company that is not complicit in the Darfur genocide is not considered a scrutinized company under subparagraph (1)(w)1. ~~(1)(t)1.~~, subparagraph (1)(w)2. ~~(1)(t)2.~~, or subparagraph (1)(w)3. ~~(1)(t)3.~~

(3) REQUIRED ACTIONS.—The public fund shall adhere to the following procedure for assembling companies on the Scrutinized Companies with Activities in Sudan List, ~~and~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, and the Scrutinized Companies with Activities in Syria List:

(a) Engagement.—

1. The public fund shall immediately determine the companies on the Scrutinized Companies with Activities in Sudan List, ~~and~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, and the Scrutinized Companies with Activities in Syria List in which the public fund owns direct or indirect holdings.

2. For each company identified in this paragraph that has only inactive business operations, the public fund shall send a written notice informing the company of this act and encouraging it to continue to refrain from initiating active business operations in Sudan, ~~or~~ Iran, Cuba, or Syria until it is able to avoid scrutinized business operations. The public fund shall continue such correspondence semiannually.

3. For each company newly identified under this paragraph that has active business operations, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice must inform the company of the opportunity to clarify its Sudan-related, ~~or~~ Iran-related, Cuba-related, or Syria-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the public fund.

4. If, within 90 days after the public fund's first engagement with a company pursuant to this paragraph, that company ceases scrutinized business operations, the company shall be removed from the Scrutinized Companies with Activities in Sudan List, ~~and~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, and the Scrutinized Companies with Activities in Syria List, and the provisions of this act shall cease to apply to that company unless that company resumes scrutinized business operations. If, within 90 days after the public fund's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company is subject to all provisions relating to inactive business operations. A company may be removed from one list but remain on the other list, in which case the company shall be subject to the provisions applicable to the list on which the company remains.

(b) Divestment.—

1. If, after 90 days following the public fund's first engagement with a company pursuant to paragraph (a), the company continues to have scrutinized active business operations, and only while such company continues to have scrutinized active business operations, the public fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except as provided in paragraph (d), from the public fund's assets under management within 12 months after the company's most recent appearance on the Scrutinized Companies with Activities in Sudan List, ~~or on~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the Scrutinized Companies with Activities in Syria List.

2. If a company that ceased scrutinized active business operations following engagement pursuant to paragraph (a) resumes such operations, this paragraph immediately applies, and the public fund shall send a written notice to the company. The company shall also be immediately reintroduced onto the Scrutinized Companies with Activities in Sudan List, ~~or on~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the Scrutinized Companies with Activities in Syria List, as applicable.

(c) Prohibition.—The public fund may not acquire securities of companies on the Scrutinized Companies with Activities in Sudan List, ~~or~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the

Scrutinized Companies with Activities in Syria List that have active business operations, except as provided in paragraph (d).

(d) Exemption.—A company that the United States Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan, ~~or~~ Iran, Cuba, or Syria is not subject to divestment or the investment prohibition pursuant to paragraphs (b) and (c).

(e) Excluded securities.—Notwithstanding the provisions of this act, paragraphs (b) and (c) do not apply to indirect holdings in actively managed investment funds. However, the public fund shall submit letters to the managers of such investment funds containing companies that have scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, a private equity fund is deemed to be an actively managed investment fund.

(f) Further exclusions.—Notwithstanding any other provision of this act, the public fund, when discharging its responsibility for operation of a defined contribution plan, shall engage the manager of the investment offerings in such plans requesting that they consider removing scrutinized companies from the investment offerings or create an alternative investment offering devoid of scrutinized companies. If the manager creates an alternative investment offering and the offering is deemed by the public fund to be consistent with prudent investor standards, the public fund shall consider including such investment offering in the plan.

(4) REPORTING.—

(a) The public fund shall file a report with each member of the Board of Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives that includes the Scrutinized Companies with Activities in Sudan List<u>,</u> ~~and~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List<u>, the Scrutinized Companies with Activities in Cuba List, and the Scrutinized Companies with Activities in Syria List</u> within 30 days after the list is created. This report shall be made available to the public.

(b) At each quarterly meeting of the Board of Trustees thereafter, the public fund shall file a report, which shall be made available to the public and to each member of the Board of Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives, and send a copy of that report to the United States Presidential Special Envoy to Sudan<u>,</u> ~~and~~ the United States Presidential Special Envoy to Iran, <u>the United States Presidential Special Envoy to Cuba, and the United States Presidential Special Envoy to Syria,</u> or an appropriate designee or successor, which includes:

1. A summary of correspondence with companies engaged by the public fund under subparagraphs (3)(a)2. and 3.;

2. All investments sold, redeemed, divested, or withdrawn in compliance with paragraph (3)(b);

3. All prohibited investments under paragraph (3)(c);

4. Any progress made under paragraph (3)(e); and

5. A list of all publicly traded securities held directly by this state.

(5) EXPIRATION.—This act expires upon the occurrence of all of the following:

(a) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraphs (1)(w)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer assemble the Scrutinized Companies with Activities in Sudan List, shall cease engagement and divestment of such companies, and may reinvest in such companies as long as such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the Scrutinized Companies with Activities in Syria List:

1. The Congress or President of the United States, affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the Darfur genocide has been halted for at least 12 months;

2. The United States revokes all sanctions imposed against the government of Sudan;

3. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written

certification from the President to Congress, that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

4. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

(b) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraph (1)(w)4. ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and shall cease engagement, investment prohibitions, and divestment. The public fund may reinvest in such companies as long as such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in Cuba List, or the Scrutinized Companies with Activities in Syria List:

1. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass

destruction and support international terrorism;

2. The United States revokes all sanctions imposed against the government of Iran; or

3. The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

(c) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraphs (1)(w)5. and 6. and shall no longer assemble the Scrutinized Companies with Activities in Cuba List and shall cease engagement, investment prohibitions, and divestment. The public fund may reinvest in such companies as long as such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Syria List:

1. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Cuba has ceased to acquire weapons of mass destruction and support international terrorism;

2. The United States revokes all sanctions imposed against the government of Cuba; or

3. The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

(d) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraphs (1)(w)7. and 8. and shall no longer assemble the Scrutinized Companies with Activities in Syria List and shall cease engagement, investment prohibitions, and divestment. The public fund may reinvest in such companies as long as such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Cuba List:

1. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Cuba has ceased to acquire weapons of mass destruction and support international terrorism;

2. The United States revokes all sanctions imposed against the government of Syria; or

3. The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory

<u>divestment of the type provided for in this act interferes with the conduct of United States foreign policy.</u>

(6) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The public fund's actions taken in compliance with this act, including all good faith determinations regarding companies as required by this act, shall be adopted and incorporated into the public fund's investment policy statement (the IPS) as set forth in s. 215.475.

(7) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED ACTIVE BUSINESS OPERATIONS.—Notwithstanding any other provision of this act to the contrary, the public fund may cease divesting from certain scrutinized companies pursuant to paragraph (3)(b) or reinvest in certain scrutinized companies from which it divested pursuant to paragraph (3)(b) if clear and convincing evidence shows that the value of all assets under management by the public fund becomes equal to or less than 99.50 percent, or 50 basis points, of the hypothetical value of all assets under management by the public fund assuming no divestment for any company had occurred under paragraph (3)(b). Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this act is limited to the minimum steps necessary to avoid the contingency set forth in this subsection or that no divestment of any company is required for less than fair value. For any cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this act, the public fund shall provide a written report to each member of the Board of Trustees of the State Board of Administration, the President of the Senate, and the Speaker of the House of Representatives in

advance of initial reinvestment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain invested in companies having scrutinized active business operations. This act does not apply to reinvestment in companies on the grounds that they have ceased to have scrutinized active business operations.

Section 2. Section 287.135, Florida Statutes, is amended to read:

287.135 Prohibition against contracting with scrutinized companies.—

(1) In addition to the terms defined in ss. 287.012 and 215.473, as used in this section, the term:

(a) "Awarding body" means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

(b) "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state.

(2) A company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List, ~~or~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the Scrutinized Companies with Activities in Syria List, created pursuant to s. 215.473, is ineligible for, and may not bid on, submit a proposal for, or

enter into or renew a contract with an agency or local governmental entity for goods or services of $1 million or more.

(3)(a) Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after July 1, 2011, through June 30, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5) or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(b) Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5) or been placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the Scrutinized Companies with Activities in Syria List.

(4) Notwithstanding subsection (2) or subsection (3), an agency or local governmental entity, on a case-by-case basis, may permit a company on the Scrutinized Companies with Activities in Sudan List, ~~or~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the

Scrutinized Companies with Activities in Syria List to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of $1 million or more under ~~either of~~ the ~~following~~ conditions set forth in paragraph (a) or the conditions set forth in paragraph (b):

(a)1. With respect to a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, all of the following occur:

a.~~1.~~ The scrutinized business operations were made before July 1, 2011.

b.~~2.~~ The scrutinized business operations have not been expanded or renewed after July 1, 2011.

c.~~3.~~ The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d.~~4.~~ The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

2. With respect to a company on the Scrutinized Companies with Activities in Cuba List or the Scrutinized Companies with Activities in Syria List, all of the following occur:

a. The scrutinized business operations were made before July 1, 2012.

b. The scrutinized business operations have not been expanded or renewed after July 1, 2012.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

(b) One of the following occurs:

1. The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.

2. For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

3. For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

(5) At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of $1 million or more, the company must certify that the company is not on the Scrutinized Companies with Activities in Sudan List, ~~or~~ the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in Cuba List, or the Scrutinized Companies with

Activities in Syria List.

(a) If, after the agency or the local governmental entity determines, using credible information available to the public, that the company has submitted a false certification, the agency or local governmental entity shall provide the company with written notice of its determination. The company shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If the company does not make such demonstration within 90 days after receipt of the notice, the agency or the local governmental entity shall bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay the penalty described in subparagraph 1. and all reasonable attorney ~~attorney's~~ fees and costs, including any costs for investigations that led to the finding of false certification.

1. A civil penalty equal to the greater of $2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.

2. The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.

(b) A civil action to collect the penalties described in paragraph (a) must commence within 3 years after the date the false certification is submitted.

(6) Only the agency or local governmental entity that is a

party to the contract may cause a civil action to be brought under this section. This section does not create or authorize a private right of action or enforcement of the penalties provided in this section. An unsuccessful bidder, or any other person other than the agency or local governmental entity, may not protest the award of a contract or contract renewal on the basis of a false certification.

(7) This section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.

(8) The department shall submit to the Attorney General of the United States a written notice:

(a) Describing this section within 30 days after July 1, 2011.

(b) Within 30 days after July 1, 2012, apprising the Attorney General of the United States of the inclusion of companies on the Scrutinized Companies with Activities in Cuba List and the Scrutinized Companies with Activities in Syria List within the provisions of this section.

(9) This section becomes inoperative on the date that federal law ceases to authorize the states to adopt and enforce the contracting prohibitions of the type provided for in this section.

Section 3. This act shall take effect July 1, 2012.